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EVIDENCE—TRAILING BY BLOODHOUNDS—The method of trailing criminals by bloodhounds has given rise to the interesting question as to the admissibility of such a transaction as a means of identifying the perpetrator of a crime. Notwithstanding the antiquity of the practice,¹ the subject apparently did not come before the courts until quite recently. In what appears to be the earliest reported decision,² evidence of the trailing of a suspected murderer by a bloodhound was admitted without much discussion. Shortly afterwards, it was held that "It is a matter of common knowledge and therefore a matter of which courts will take judicial notice that bloodhounds are possessed of a high degree of intelligence and acuteness of scent, and may be trained to follow human tracks with considerable certainty and success, if put upon a recent trail."³

Although most authorities⁴ are in favor of the admission of "Bloodhound evidence" when certain conditions precedent have been satisfied, its dangerous character has been universally recognized. Thus, in the leading case of *Pedigo v. Commonwealth*,⁵ in which the court admitted such evidence, it is stated in the majority opinion that "It is well known that the exercise of a mysterious power not possessed by human beings begets in the minds of many people a superstitious awe like that inspired by the bleeding of a corpse at the touch of the supposed murderer, and that they see in such an exhibition a direct interposition of divine providence in aid of human justice. The very name by which the animal is called has a direct tendency to enhance the impressiveness of the performance, and it would be dangerous in the extreme to permit the introduction of such testimony in a criminal case under conditions which did not fully justify its consideration as a circumstance tending to connect the accused with the crime."

While there are conflicts of opinion regarding the preliminary elements requisite to the admissibility of "bloodhound evidence" it is clear that those courts which permit its introduction are seeking merely to establish a proper foundation and to provide adequate safeguards therefor.⁶ Preliminary to the admission of such testimony,

¹ "Bloodhounds, or as they are sometimes termed, sleuthhounds, have been employed since the times of the Romans in pursuing and hunting human beings, and a small variety, known as the Cuban bloodhound, was used to track fugitive negroes in slaveholding times." *Encyclopædia Britannica* (11th Ed.) Vol. VIII, p. 378.

² *Hodge v. State*, 98 Ala. 10 (1893).

³ *State v. Tall*, 3 Ohio N. P. 125 (1896).

⁴ *Davis v. State*, 47 Fla. 26 (1904); *Pedigo v. Commonwealth*, 103 Ky. 41 (1898); *State v. Rasco*, 238 Mo. 535 (1911); *Parker v. State*, 46 Tex. Crim. 461 (1904); *Underhill*, "Criminal Evidence" §374 (a).

⁵ *Supra*, n. 4.

⁶ *Duffy, J.*, in dissenting opinion to *Pedigo v. Commonwealth*, *supra*, n. 4, said: "It is true that the majority opinion so restricts such proof and requires so many conditions precedent, that, if the opinion in question should

the bloodhound in question must be shown to have been trained to follow human beings by their tracks and scent and to have been tested, on other occasions, as to its accuracy and acuteness.⁷ It must appear that the person in control of the dog and who is testifying about him is reliable.⁸ Also, the dog must have been placed upon the trail at a point where the circumstances tend clearly to show that the guilty person has been and has made the trail.⁹ Some authorities require that the pedigree of the dog be proved.¹⁰ As a general rule, the facts as to the tracking by a bloodhound will not be admitted, unless corroborated by measurements of the footprints or by some other evidence concerning the identity of the accused.¹¹

The case of *Brott v. State*¹² has been regarded as contrary to the weight of authority.¹³ Whether or not the court's opinion, which disapproved of the rule existing in most states, is *dictum*,¹⁴ it is, nevertheless, "forcible and calculated to excite great caution, if not entire distrust."¹⁵ The court criticises the common belief as to the capacity of bloodhounds as a "delusion which abundant actual experience has failed to dissipate." The effect of the admission is vividly pictured as follows: "If such evidence were held to be legal evidence, it would, standing alone, sustain a conviction, and courts in this golden age of enlightenment, would now and again be under the humiliating necessity of adjudging that some citizen be deprived of his property, his liberty, or his life, because, forsooth, within twenty-

be strictly adhered to, no great injustice would very often result from evidence admitted under the ruling in question."

⁷ *State v. Adams*, 85 Kan. 435 (1911).

⁸ *State v. Rasco*, *supra*, n. 4. It cannot be shown on cross-examination that other dogs owned by the same man were unreliable. *Simpson v. State*, 111 Ala. 6 (1896). But a witness may compare the dog in question with other dogs he has seen perform, in order to show his qualification to have an opinion as to when a dog has been properly trained. *Gallant v. State*, 167 Ala. 60 (1910).

⁹ *State v. Moore*, 129 N. C. 494 (1901).

¹⁰ *State v. Hunter*, 143 N. C. 607 (1907); *State v. Dickerson*, 77 Ohio, 34 (1907); *contra*, *Spears v. State*, 92 Miss. 166 (1908); Chamberlayne, "Modern Law of Evidence," Vol. 3, 1760. In the only civil case, in which the question has arisen, it was held that in an action for unlawful search for stolen goods, evidence that bloodhounds trailed to the plaintiff's house was admitted solely for the purpose of mitigating damages, by showing want of actual malice. It was held, however, that it was error to admit testimony laudatory of the pedigree, training and usefulness of the dogs in question. *McClung v. Brenton*, 123 Ia. 368 (1904).

¹¹ Cases cited in n. 5; *contra*, *State v. Hall*, *supra*, n. 3; *dictum* in *State v. Freeman*, 146 N. C. 615 (1908).

¹² 70 Neb. 395 (1903).

¹³ Wigmore on Evidence, Vol. 5, p. 22.

¹⁴ The opinion states: "The conduct of the dogs was, perhaps, rightly received in connection with an admission made by Brott, as evidence tending to prove that he committed the crime charged." The court added that such evidence was incompetent to prove independent crimes to which the admission did not relate.

¹⁵ Price, J., in *State v. Dickerson*, *supra*, n. 10.

four or forty hours after the commission of a crime, a certain dog indicated by his conduct that he believed the scent of some microscopic particles supposed to have been dropped by the perpetrator of the crime, was identical, or closely resembled, the scent of the person who had been accused and put upon trial."

In the recent case of *People v. Pfanschmidt*,¹⁶ the question as to the competency of "bloodhound evidence" again arose and was decided in the negative. The facts of the case are unique. A bloodhound was given the scent from a horse track, made thirty hours before, at the scene of the murder of which the defendant was accused. It took up the trail for a short distance and was then carried in an automobile until within short distances of crossroads where it was allowed to get out and again pick up the scent. The hound trailed to the defendant's buggy standing outside his stable, then went to his house and finally returned to the stable where he lay down behind a particular horse belonging to the defendant. The court in rejecting this evidence said: "Neither court nor jury can have any means of knowing why the dog does one thing or another in following in one direction instead of in another; that must be left to his instinct without knowing upon what it is based. The information obtainable on this subject scientific, legal, or otherwise, is not of such a character as to furnish any satisfactory basis or reason for the admission of this class of evidence."

Although the court reached the conclusion that "testimony as to the trailing of either man or animal should never be admitted in any case," it was greatly influenced by the fact that many of the various precautionary prerequisites of admissibility, which have been previously stated, had not been satisfied. The opinion cannot be cited as being flatly contrary to the sound rule which has been followed practically universally,¹⁷ since the court was obviously controlled by considerations which concerned the weight rather than the admissibility of the evidence in question.

A. L. L.

HUSBAND AND WIFE—FRAUD ON MARITAL RIGHTS—There is little question that at common law a woman cannot on the eve of or in contemplation of marriage dispose of her property without the knowledge of her intended spouse so as to deprive him of his legal interest in it, because such a conveyance would be a fraud on his marital rights.¹ The reason for the rule is clear: since the husband was entitled to all his wife's personalty and to the rents, issues and profits from her realty during coverture and to curtesy after her death, a conveyance by the wife made just before marriage would rob him

¹⁶ 104 N. E. Rep. 804 (Ill., 1914).

¹⁷ Except in *Brott v. State*, *supra*, n. 12.

¹ *Strathmore v. Bowes*, 1 V. 22 (Eng. 1789); *Downes v. Jennings*, 32 Beav. 290 (Eng. 1863).